

## **Opinion No. 71-41**

March 10, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Senator John P. Eastham New Mexico State Senate Legislative-Executive Building  
Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. What does the statute mean when it says that three members "shall be practical breeders of race horses within the state of New Mexico"? Does this require that the commissioners have both a stallion and mares or would it be sufficient for the commissioners to have just one or the other?
2. Would there be a prohibition under the statute against appointing a person as racing commissioner who has ownership interests in a race track in New Mexico?

#### CONCLUSIONS

1. See analysis.
2. See analysis.

### **OPINION**

#### **{\*59} ANALYSIS**

1. There is no statutory definition of "practical breeders of race horses" in New Mexico. In *Bell Publishing Company, et al, v. Garrett Engineering Company*, (Tex., 1943) 170 S.W.2d 197, the court was confronted with the question of interpreting the phrase "practical engineer". The trial court, in its charge to the jury, defined "practical" in the sense therein used to mean "trained by or derived from experience or practice; hence, skilled in the application of means in attaining particular ends -- experience." The appellate court approved this definition by the trial court.

The definition hereinabove set forth of the word "practical" is the one generally accepted by persons of common experience.

In my opinion, it was the intent of the legislature that a similar meaning should be ascribed to the term "practical breeders of race horses". I can find no authority which would require a state racing commissioner to have both a stallion and mares nor one or the other, if, in fact, he is experienced in or has practice at breeding horses. Registration

of stallions or mares in ones name would be supportive of the proposition that one was a "practical breeder".

There are numerous racing organizations in New Mexico, as well as in other states, which would define a "practical breeder" in different ways. I care not to choose between the variety of possibilities which exist in this area. It may be well for the legislature to consider ascribing a definition to the phrase.

2. In answer to your second question, no person shall be eligible for appointment as a member of the New Mexico Racing Commission who is an **officer, official or director** in any association or corporation conducting racing within this state. An ownership interest in a racing track would not, per se, prohibit a person from serving on {\*60} the Racing Commission. If he were an **officer, official or director**, however, such prohibition would exist.